

IP 05-0157-C H/S Fiscus v Silgan Plastics
Judge David F. Hamilton

Signed on 6/28/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

RICKY J. FISCUS,)	
)	
Plaintiff,)	
vs.)	NO. 1:05-cv-00157-DFH-VSS
)	
SILGAN PLASTICS CORPORATION,)	
)	
Defendant.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

RICKY J. FISCUS,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 1:05-cv-0157-DFH-VSS
)	
SILGAN PLASTICS CORPORATION,)	
)	
Defendant.)	

ENTRY ON ATTORNEY'S MOTION TO WITHDRAW

Plaintiff's attorney has moved to withdraw. The attorney's letter to the plaintiff states that "you wish to continue pursuing your matter against Silgan Plastics Corporation without my assistance." The letter does not indicate what prompted this choice or whether the plaintiff consents to the attorney's withdrawal. In the absence of an affirmative showing that the client consents to the attorney's withdrawal, the court presumes the client objects, in which case the attorney must show a valid and compelling reason for allowing withdrawal despite the presumed objection. See *Stafford v. Mesnik*, 63 F.3d 1445, 1448 (7th Cir. 1995); *Woodall v. Drake Hotel, Inc.*, 913 F.2d 447, 449 (7th Cir. 1990).

Pursuant to order of this court, the conduct of counsel in this court is governed by the Rules of Professional Conduct adopted by the Supreme Court of Indiana. Rule 1.16 of the Rules of Professional Conduct governs termination of

representation. Plaintiff's counsel has not yet established any of the specific grounds for withdrawing under Rule 1.16(a) or (b), and has not yet established "other good cause" for withdrawing. Also relevant here is the provision in Rule 1.16(c): "When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation."

When an attorney seeks to withdraw from a case and no substitute counsel have appeared, the court must consider the interests not only of the counsel but also the client, the other parties, and the court. See *Hammond v. T.J. Little & Co.*, 809 F. Supp. 156, 159 (D. Mass. 1992) ("An attorney who agrees to represent a client in a court proceeding assumes a responsibility to the court as well as to the client."); *Gibbs v. Lappies*, 828 F. Supp. 6, 7 (D.N.H. 1993); *Haines v. Liggett Group, Inc.*, 814 F. Supp. 414, 423 (D.N.J. 1993). As Judge Keeton explained in *Hammond*:

The relationship between attorneys and their clients is contractual. Nevertheless, the terms and effect of a severance of the relationship do not depend solely on findings of breach, or who broke the contract first, or whose breach was more substantial. An attorney who agrees to represent a client in a court proceeding assumes a responsibility to the court as well as to the client. Both attorney and client agree to a relationship between them that bears also upon their respective obligations to the court.

809 F. Supp. at 159. The court has a responsibility to mitigate the effects on other parties and the court of any breakdown in what might otherwise be a private relationship between plaintiff and his attorneys.

Because of the challenges that a *pro se* party can pose for both the court and the opposing party, the court does not routinely grant motions to withdraw. Too often, a plaintiff's attorney will seek to withdraw from a weak case, leaving the case like an orphan on the court's and opponent's doorstep. The court and the opponent are thus left the task of educating the *pro se* party about applicable law and procedure, and often about the weaknesses in his case. Typically, such education should be the responsibility of that party's original lawyer.

Accordingly, plaintiff's attorney's motion to withdraw is denied. The denial is without prejudice to possible renewal if plaintiff Fiscus expressly consents or if there are compelling reasons to allow withdrawal. Defendant's motion to extend all deadlines in the Case Management Plan is hereby granted. All such deadlines are hereby extended by three months.

So ordered.

Date: June 28, 2005

DAVID F. HAMILTON, JUDGE
United States District Court
Southern District of Indiana

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